

Message Text

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ACTION COME-00

INFO OCT-01 AF-10 ISO-00 SP-02 USIA-15 AID-05 EB-08
NSC-05 TRSE-00 SS-15 STR-05 OMB-01 CEA-01 CIAE-00
FRB-01 INR-07 NSAE-00 XMB-04 OPIC-06 LAB-04
SIL-01 H-02 L-03 PA-02 PRS-01 /099 W
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FM AMEMBASSY ABIDJAN

TO SECSTATE WASHDC PRIORITY 6039

UNCLAS SECTION 1 OF 2 ABIDJAN 10743

PASS COMMERCE INVESTMENT POLICY DIVISION AND OPIC
FOR INFO

E.O. 11652: N/A

TAGS: EINV, IV

SUBJECT: IVORY COAST INVESTMENT POLICY

REF: STATE 242996

1. SUMMARY: CONSISTENT WITH ITS GENERALLY LIBERAL
ECONOMIC POLICY, THE GOIC WELCOMES FOREIGN INVEST-
MENTS AND IMPOSES FEW RESTRICTIONS ON IT. UNDER AN INVESTMENT
CODE PASSED IN 1959 AND STILL IN EFFECT, INVESTMENTS DEEMED
TO BE OF A PRIORITY NATURE MAY BENEFIT FROM A VARIETY
OF EXEMPTIONS FROM TAXES AND DUTIES FOR LIMITED
PERIODS OF TIME. A NUMBER OF THESE INCENTIVITIES HAVE
NOW ALSO BEEN WRITTEN INTO THE TAX CODE ITSELF.
FINALLY, A FEW FIRMS HAVE BEEN ACCORDED PROTECTION
AGAINST IMPORTS INTO IVORY COAST COMPETITIVE WITH
THEIR PRODUCTS. DURING THE 1960'S THE GOIC EMPHA-
SIZED PROMOTION OF IMPORT SUBSTITUTION PROJECTS,
BUT MORE RECENTLY, HAS CONCENTRATED INCREASINGLY
ON EXPANSION OF ITS EXPORT INDUSTRY. TO DATE, THE
GOIC HAS IMPOSED FEW PERFORMANCE REQUIREMENTS ON
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FOREIGN ENTERPRISES, BUT THERE IS EVIDENCE THAT IT IS
CONSIDERING REVISING THE INVESTMENT CODE TO BE MORE
SPECIFIC IN SPELLING OUT THE OBLIGATIONS OF AS WELL
AS THE PRIVILEGES TO BE ACCORDED TO PRIORITY ENTER-
PRISES (HOWEVER STILL WITHIN THE CONTEXT OF AN OVER-
ALL POLICY OF FAIR PLAY AND CONTINUITY IN THE TREAT-
MENT OF FOREIGN INVESTMENT). THE GOIC DOES NOT OFFER

EXEMPTIONS FOR FOREIGN INVESTMENT FROM LAWS AND REGULATIONS GOVERNING EMPLOYMENT AND INDUSTRIAL RELATIONS. END SUMMARY

2. THROUGHOUT THE YEARS SINCE INDEPENDENCE IN 1960, THE GOIC UNDER PRESIDENT HOUPHOUET-BOIGNY HAS MAINTAINED AN UNSWERVING COMMITMENT TO A POLICY OF MAXIMUM ECONOMIC GROWTH AS THE KEY TO NATIONAL DEVELOPMENT AND AN IMPROVING STANDARD OF LIVING FOR ITS PEOPLE. GIVEN THE LOW LEVELS OF IVORIAN DOMESTIC CAPITAL FORMATION AND TECHNICAL AND MANAGERIAL KNOWHOW, THIS POLICY HAS LED THE GOVERNMENT TO WELCOME FOREIGN INVESTMENT IN ALL FORMS AND TO OFFER GENEROUS INCENTIVES TO COMPANIES ESTABLISHING PLANTS IN THE IVORY COAST.

3. INVESTMENT INCENTIVES: THE PRINCIPAL INSTRUMENT FOR STIMULATING INVESTMENT IN IVORY COAST IS THE PRIVATE INVESTMENT CODE (LAW NO. 59-134 OF SEPTEMBER 3, 1959). THIS CODE DEFINES THE TYPES OF ENTERPRISES ON WHICH THE GOIC IS WILLING TO CONFER PRIORITY STATUS AND THE BENEFITS TO WHICH PRIORITY ENTERPRISES ARE ENTITLED. IN ORDER TO RECEIVE PRIORITY STATUS, AN ENTERPRISE MUST (1) UNDERTAKE AN INVESTMENT IMPORTANT TO THE DEVELOPMENT OF THE IVORIAN ECONOMY; AND (2) FALL INTO ONE OF THE UNCLASSIFIED

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FOLLOWING CATEGORIES:

- REAL ESTATE ENTERPRISES;
- ENTERPRISES ENGAGED IN AGRO-INDUSTRIAL PRODUCTION AND PROCESSING;
- ENTERPRISES ENGAGED IN MECHANICAL OR CHEMICAL PROCESSING OF LOCAL VEGETABLE AND ANIMAL PRODUCTS;
- MANUFACTURE AND ASSEMBLY OF GOODS FOR LARGE-SCALE CONSUMPTION;
- ENTERPRISES ENGAGED IN MINERAL (INCLUDING OIL) EXTRACTION;
- ENTERPRISES ENGAGED IN ENERGY PRODUCTION.

APPLICATIONS FOR PRIORITY STATUS ARE SUBMITTED TO THE MINISTRY OF PLAN DIRECTION DU DEVELOPEMENT INDUSTRIEL WHICH THEN IS RESPONSIBLE FOR OBTAINING THE ADVICE OF OTHER RELEVANT GOVERNMENT AGENCIES REGARDING THE INVESTMENT IN PREPARING A REPORT TO THE COUNCIL OF MINISTERS. ATTRIBUTION OF PRIORITY STATUS OCCURS BY DECREE OF THE COUNCIL. IN THEORY PRACTICALLY ANY INDUSTRIAL ENTERPRISE COULD BE

ELIGIBLE FOR PRIORITY STATUS UNDER ONE OF THE ABOVE CATEGORIES. HOWEVER, QUALIFICATION IS NOT AUTOMATIC, SUBJECT AS IT IS TO CONSIDERATION OF THE BROAD RANGE OF ECONOMIC DEVELOPMENT OBJECTIVES.

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INFO OCT-01 AF-10 ISO-00 SP-02 USIA-15 AID-05 EB-08
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PASS COMMERCE INVESTMENT POLICY DIVISION AND OPIC
FOR INFO

4. NATIONALITY IS NOT A CONSIDERATION IN THE SELECTION OF PRIORITY ENTERPRISES. THE INVESTMENT CODE, AND FOR THAT MATTER ALL OTHER LEGISLATION AFFECTING FOREIGN INVESTMENT IN IVORY COAST, APPEARS COMPLETELY CONSISTENT WITH THE PRINCIPLE OF EQUAL TREATMENT FOR DOMESTIC AND FOREIGN INVESTMENT.

5. ALL PRIORITY ENTERPRISES ARE ENTITLED TO THE FOLLOWING BENEFITS:

--FIVE-YEAR EXEMPTION FROM CORPORATE PROFITS TAX, TRADING TAXES, REAL ESTATE AND PROPERTY TAXES;
--EXEMPTION FROM IMPORT DUTY ON SUPPLIES NECESSARY FOR THE ESTABLISHMENT OF THE FACTORY, AND, FOR TEN YEARS, ON RAW MATERIALS USED IN THE MANUFACTURING PROCESS;
--REDUCTION OF REGISTRATION FEES AND STAMP TAXES;
--FIVE-YEAR EXEMPTION FROM MINING TAX;
--TEN-YEAR EXEMPTION FROM 50 PERCENT OF EXPORT
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DUTIES ON FACTORY PRODUCTS.

IN ADDITION, ENTERPRISES DEEMED TO BE OF ESPECIALLY HIGH PRIORITY MAY BE GRANTED THE BENEFITS OF THE "REGIME FISCAL DE LONGUE DUREE" UNDER WHICH ENTERPRISES RECEIVE A GUARANTEE THAT THE TAX REGIME UNDER WHICH THEY OPERATE WILL NOT BE ALTERED FOR THE WORSE FOR UP TO 25 YEARS (PLUS UP TO FIVE YEARS ALLOWANCE FOR THE FACTORY TO ENTER INTO OPERATION). THE LONG-TERM TAX REGIME IS ESTABLISHED ON A CASE-BY-CASE BASIS IN A "CONVENTION D'ETABLISSEMENT" BETWEEN THE GOIC AND THE ENTERPRISE.

6. THE 1959 INVESTMENT CODE HAS NEVER BEEN ALTERED. HOWEVER, SUBSEQUENT MEASURES HAVE EXPANDED UPON OR DUPLICATED THE CODE'S TERMS. ARTICLES 4 AND 84 OF THE TAX CODE NOW EXEMPT NEW FACTORIES FROM PROFITS, REAL ESTATE, AND TRADING TAXES. A 1973 REVISION OF THE TARIFF SCHEDULE SET IMPORT DUTIES IN DIRECT PROPORTION TO DEGREE OF PROCESSING, THUS IN EFFECT RENDERING THE DUTY EXEMPTION FOR RAW MATERIAL IMPORTS IN THE INVESTMENT CODE UNNECESSARY. IMPORT QUOTAS HAVE BEEN USED ON OCCASION TO PROTECT ENTERPRISES PRODUCING FOR THE LOCAL MARKET BY RESTRICTING IMPORTS OF COMPETITIVE PRODUCTS. FINALLY, LAW NO. 73-368 OF JULY 26, 1973 ESTABLISHED A WIDE RANGE OF INCENTIVES SIMILAR TO THOSE IN THE INVESTMENT CODE FOR INVESTMENTS IN THE TOURISM SECTOR.

7. IT APPEARS THAT THE GOIC CONTINUES TO BELIEVE THAT THE INVESTMENT CODE HAS BENEFITTED THE DEVELOPMENT OF THE COUNTRY. GROWTH IN THE INDUSTRIAL SECTOR HAS AVERAGED IN EXCESS OF 15 PERCENT ANNUALLY SINCE 1960. AT
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YEAR-END 1976, ENTERPRISES WHICH HAD BEEN ACCORDED PRIORITY STATUS UNDER THE INVESTMENT CODE (OVER 100 IN NUMBER) ACCOUNTED FOR MORE THAN HALF OF TOTAL SALES AND TOTAL EMPLOYMENT OF THE IVORIAN INDUSTRIAL SECTOR (ENTERPRISES WITH U.S. EQUITY PARTICIPATION PRODUCING IN IVORY COAST WHICH HAVE BENEFITTED FROM THIS TREATMENT INCLUDE UNION CARBIDE (BATTERIES), BLUE BELL (BLUE JEANS), AND THE IVORIAN OIL REFINERY; UNION CARBIDE HAS ALSO RECEIVED PROTECTION AGAINST COMPETITION FROM IMPORTS). IN MOST CASES (EXCEPT

THOSE FEW INVOLVING RESTRICTIONS ON COMPETITIVE IMPORTS) LOCALLY-PRODUCED GOODS HAVE BEEN SOLD MORE CHEAPLY THAN THEIR IMPORTED COMPETITORS.

8. AT THE SAME TIME, THERE ARE INDICATIONS THAT THE GOIC MAY SUBSTANTIALLY REVISE THE INVESTMENT CODE. A STUDY COMMISSIONED BY THE MINISTRY OF PLAN IN 1976 ENTITLED "BILAN DE QUINZE ANS D'APPLICATION DU CODE DES INVESTISSEMENTS," WHILE CONFIRMING THE BENEFITS DERIVED FROM THE EXISTING CODE, MADE THE FOLLOWING OBSERVATIONS:

--WHILE THE AUTOMATICITY OF THE BENEFITS

ACCORDED TO PRIORITY ENTERPRISES HAS HELPED TO STRENGTHEN INVESTOR CONFIDENCE, IT ALSO HAS PREVENTED THE GOIC FROM NEGOTIATING FOR BETTER TERMS WITH INDIVIDUAL FIRMS. THE GOIC WOULD DO BETTER TO MAKE ITS INVESTMENT INCENTIVES SOMEWHAT MORE FLEXIBLE, PERHAPS BY CREATING SEPARATE CLASSES OF PRIORITY ENTERPRISES, WITH SPECIFIC INCENTIVES AND REQUIREMENTS TAILORED TO EACH CATEGORY.

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FRB-01 INR-07 NSAE-00 XMB-04 OPIC-06 LAB-04
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PASS COMMERCE INVESTMENT POLICY DIVISION AND OPIC
FOR INFO

--THE SHIFT IN THE GOIC'S INDUSTRIAL POLICY OVER THE YEARS FROM EMPHASIS ON GROWTH AND IMPORT SUBSTITUTION TO PRIORITY FOR EXPORT INDUSTRY, IVORIANIZATION OF CAPITAL AND LABOR, AND

REGIONAL DEVELOPMENT HAS CREATED A NEED FOR INCENTIVES BETTER SUITED TO THESE OBJECTIVES. CREATION OF AN INDUSTRIAL FREE TRADE ZONE MIGHT CONTRIBUTE TO THE GROWTH OF EXPORT INDUSTRY. ALSO, IN THE PAST, MANY FOREIGN INVESTORS OBTAINED MOST OF THEIR FINANCING LOCALLY, THEMSELVES PROVIDING ONLY THE MANAGERIAL AND TECHNICAL KNOWHOW NECESSARY TO MAKE THE PLANT RUN. THE FINANCING NEEDS OF LARGE EXPORT-ORIENTED INDUSTRY WILL EXCEED THE CAPACITY OF THE LOCAL FINANCIAL SECTOR. HENCE, IT WILL BE NECESSARY TO CONSIDER MEASURES SUCH AS INTEREST SUBSIDIES TO ATTRACT FOREIGN CAPITAL TO IVORY COAST; --THE HIGH RATE OF INCOME REMITTANCES BY FOREIGN FIRMS IN IVORY COAST TO THEIR PARENT FIRMS HAS ACTED AS A SIGNIFICANT DRAIN ON THE IVORIAN UNCLASSIFIED

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BALANCE OF PAYMENTS AND NEEDS PERHAPS TO BE REDUCED. AT THE SAME TIME, RESTRICTIONS ON SUCH REMITTANCES WOULD HAVE A MAJOR NEGATIVE IMPACT ON INVESTOR CONFIDENCE. HENCE PERHAPS INCENTIVES CAN BE USED TO INDUCE INVESTORS TO REINVEST THEIR PROFITS LOCALLY; --THE TRADE DISTORTING EFFECTS OF IMPORT QUOTAS AND DIFFERENTIAL RATES OF IMPORT DUTIES GENERALLY ARE DETRIMENTAL TO THE CONSUMER. THE SIDE-EFFECTS OF FISCAL INCENTIVES ARE USUALLY LESS SERIOUS. HENCE RELIANCE TO THE EXTENT POSSIBLE ON THE TAX SYSTEM TO PROVIDE INCENTIVES TO INVESTMENT IS A DESIRABLE OBJECTIVE.

WE HAVE NO INFORMATION ON WHETHER STEPS WILL BE TAKEN TO IMPLEMENT THE RECOMMENDATIONS IN THE 1976 REPORT. HOWEVER, IVORY COST ENJOYS FEW NATURAL COMPETITIVE ADVANTAGES OVER OTHER COUNTRIES IN ATTRACTING FOREIGN FIRMS TO ESTABLISH WITHIN ITS MARKET AND THEREFORE IS FORCED TO RELY HEAVILY UPON THE MAINTENANCE OF A STABLE POLITICAL AND BUSINESS ENVIRONMENT AS AN INCENTIVE TO SUCH INVESTMENT. GIVEN THEIR RECOGNITION OF THIS FACT, ANY REFORM MEASURES WHICH THE IVORIANS UNDERTAKE WILL ALMOST CERTAINLY BE FINE-TUNED TO AVOID DETRACTING FROM THE GOIC'S REPUTATION FOR FAIR PLAY AND CONTINUITY IN THE TREATMENT OF FOREIGN INVESTMENT.

9. PERFORMANCE REQUIREMENTS ALTHOUGH THE 1959 INVESTMENT CODE DOES ALLUDE TO THE NEED FOR IN-

VESTORS TO LIVE UP TO THEIR COMMITMENTS, IT PLACES
LITTLE EMPHASIS ON PERFORMANCE STANDARDS AND SETS
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NO PENALTIES FOR NON-COMPLIANCE. AS MENTIONED
IN VJRA. 8 ABOVE, IT APPEARS THAT ANY REVISED IN-
VESTMENT CODE WILL MOVE FURTHER IN THE DIRECTION
OF PERFORMANCE REQUIREMENTS THAN THE EXISTING
ONE DOES. IN THE MEANTIME, THE GOIC DOES HAVE A
POLICY OF ENCOURAGING IVORIANIZATION OF CAPITAL
AND LABOR OF FIRMS IN IVORY COAST, AND, IN THE CASE
OF THE LATTER, HAS EXERTED SOME PRESSURE ON FIRMS
THROUGH THE ISSUANCE OF EXPATRIATE WORK PERMITS.
PRICE CONTROLS ARE ALSO BECOMING AN IMPORTANT
MEANS OF CONTROLLING INVESTOR BEHAVIOR.

10. LABOR AND EMPLOYMENT CONDITIONS: AS NOTED
ABOVE, ALL MEASURES AFFECTING FOREIGN INVESTMENT
EMPLOYED BY THE GOIC APPLY EQUALLY TO DOMESTIC
FIRMS. CONVERSELY, ALL STANDARDS OF INDUSTRIAL
BEHAVIOR, INCLUDING THOSE RELATING TO LABOR AND
INDUSTRIAL RELATIONS (MINIMUM WAGE, HOURS OF WORK,
SOCIAL SECURITY, TRADE UNION ACTIVITY) APPLY TO
FOREIGN AS WELL AS DOMESTIC FIRMS.
STEARNS

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Message Attributes

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